



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 16, 1993

Mr. Paul Webb
City Attorney
221 North Houston Street
Wharton, Texas 77488

OR93-567

Dear Mr. Webb:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552.¹ Your request was assigned ID# 21937.

The City of Wharton (the "city"), which you represent, has received a request for a certain auditor's report. Specifically, the requestor seeks "[a]n auditor's report, described in a Aug. 3, 1993, interview with Mayor Garland Novosad, which Blomstrom, Stephenson Co. presented to the city council on Aug. 3, 1993." You claim that section 552.103(a) of the act excepts it from required public disclosure. To secure the protection of 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. *See* Open Records Decision No. 551 (1990) at 5. This office must determine on a case-by-case basis whether a governmental body reasonably may anticipate litigation. Open Records Decision No. 452 (1986) at 4 (citing Open Records Decision No. 350 (1982)).

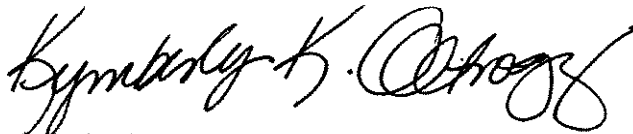
You contend that section 552.103(a) excepts the submitted auditor's report because "the document was prepared in relation to a possible litigation and for settlement negotiation." You have provided us with no facts, however, demonstrating why the city anticipates litigation in this instance. We remind you that the custodian of records has the

¹We note that V.T.C.S. article 6252-17a was repealed by the 73d Legislature. Acts 1993, 73d Leg. ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

proving that requested records are excepted from public disclosure. Attorney General Opinion H-435 (1974) at 3. If a governmental body fails to show how an exception applies to the records, it ordinarily waives the exception. *See* Open Records Decision No. 363 (1983). Because you have provided us with no facts demonstrating that the submitted information relates to pending or reasonably anticipated litigation, we cannot conclude that the city may withhold this information under section 552.103(a) of the act. Accordingly, the city must release the requested information in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Open Government Section

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Ref.: ID# 21937

cc: Mr. Ronald K. Sanders
News Editor
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(w/o enclosures)